

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 626

BY SENATORS TRUMP, WELD, WOELFEL, PHILLIPS,

ROMANO, BALDWIN, AND LINDSAY

[Originating in the Committee on the Judiciary;

reported on March 16, 2021]

1 A BILL to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §61-3-49c, all relating to
3 the purchase and possession of certain scrap metal; updating the regulation of the
4 purchase of automobile catalytic converters; requiring certain evidence and
5 documentation from a seller of an automobile catalytic converter; placing restrictions on
6 the payment for automobile catalytic converters; placing restrictions on the sale or transfer
7 of an automobile catalytic converter by a scrap metal dealer; requiring scrap metal dealer
8 to record identifying information on a catalytic convertor; creating the criminal offense of
9 possession of a catalytic converter without proof of ownership or authority to possess;
10 requiring that persons charged with possession of a single catalytic convertor are to be
11 charged by citation and not be subject to arrest; establishing an absolute defense to the
12 criminal action; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

**§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards,
or recycling facilities; certificates, records, and reports of such purchases; criminal
penalties.**

1 (a) For the purposes of this section, the following terms have the following meanings:

2 (1) "Business registration certificate" has the same meaning ascribed to it in §11-12-2 of
3 this code.

4 (2) "Purchaser" means any person in the business of purchasing scrap metal or used auto
5 parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or
6 operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto
7 parts.

8 (3) "Scrap metal" means any form of copper, aluminum, brass, lead, or other nonferrous
9 metal of any kind, a catalytic converter, or any materials derived from a catalytic converter, or
10 steel railroad track and track material.

11 (b) In addition to any requirement necessary to do business in this state, a scrap metal
12 dealer shall:

13 (1) Have a current valid business registration certificate from the Tax Commissioner;

14 (2) Register any scales used for weighing scrap metal with the Division of Labor Weights
15 and Measures office;

16 (3) Provide a notice of recycling activity to the Department of Environmental Protection;
17 and

18 (4) Register as a scrap metal dealer with the Secretary of State, who ~~is hereby directed to~~
19 shall maintain a list of scrap metal dealers and make it ~~publically~~ publicly available. The list shall
20 include the dealer's business address, hours of operation, physical address, phone number,
21 facsimile number, if any, and the name of the owners or principal officers of the business.

22 (c) Any purchaser of scrap metal shall make a record of such purchase that shall contain
23 the following information for each transaction:

24 (1) The full name, permanent home and business addresses, and telephone number, if
25 available, of the seller;

26 (2) A description and the motor vehicle license number of any vehicle used to transport
27 the purchased scrap metal to the place of purchase;

28 (3) The time and date of the transaction;

29 (4) A complete description of the kind, character, and weight of the scrap metal purchased;
30 and

31 (5) A statement of whether the scrap metal was purchased, taken as collateral for a loan,
32 or taken on consignment.

33 (d) A purchaser also shall require and retain from the seller of the scrap metal the
34 following:

35 (1) A signed certificate of ownership of the scrap metal being sold or a signed authorization
36 from the owner of the scrap metal to sell ~~said~~ the scrap metal; and

37 (2) A photocopy of a valid driver's license or identification card issued by the West Virginia
38 Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other
39 valid photo identification of the seller issued by any other state or the federal government:
40 *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the
41 purchaser may reference the identification that is on file, without making a separate photocopy
42 for each transaction.

43 (e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and
44 recording the information required under subsections (c) and (d) of this section. The provisions of
45 this subsection do not apply to purchases made at wholesale under contract or as a result of a
46 bidding process: *Provided*, That the purchaser retains and makes available for review consistent
47 with subsection (g) of this section the contract, bill of sale, or similar documentation of the
48 purchase made at wholesale under contract or as a result of a bidding process: *Provided*,
49 *however*, That the purchaser may redact any pricing or other commercially sensitive information
50 from ~~said~~ the contract, bill of sale, or similar documentation before making it available for
51 inspection.

52 (f) ~~No~~ A purchaser of scrap metal may not knowingly purchase or possess a stainless
53 steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable
54 part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives
55 the keg or keg parts from the beer manufacturer or its authorized representative.

56 (g) Using a form provided by the West Virginia State Police, or his or her own form, a
57 purchaser of scrap metal shall retain the records required by this section at his or her place of
58 business for not less than three years after the date of the purchase. Upon completion of a

59 purchase, the records required to be retained at a purchaser's place of business shall be available
60 for inspection by any law-enforcement officer or, upon written request and during the purchaser's
61 regular business hours, by any investigator employed by a public utility or railroad to investigate
62 the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the
63 records at ~~their~~ his or her place of business, the purchaser shall file the records with the local
64 detachment of the State Police and with the chief of police of the municipality or the sheriff of the
65 county ~~wherein~~ he or she is transacting business within ~~seventy-two~~ 72 hours of completion of
66 the purchase. The records shall be retained by the State Police and the chief of police of the
67 municipality or the sheriff for a period of not less than three years.

68 (h) To the extent otherwise permitted by law, any investigator employed by a public utility
69 or railroad to investigate the theft of public utility or railroad property may accompany a law-
70 enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist
71 law enforcement in the review of records required to be retained pursuant to this section.

72 (i) Upon the entry of a final determination and order by a court of competent jurisdiction,
73 scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be
74 returned to the proper owner of ~~such~~ the material.

75 (j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt,
76 or otherwise alter, the form of scrap metal and transform it into a new product or to the purchase
77 or transportation of food and beverage containers or other nonindustrial materials having a
78 marginal value per individual unit.

79 (k)(1) Nothing in this section applies to a purchaser of a motor vehicle on which a catalytic
80 converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle
81 owned or leased by the purchaser, or any person who purchases, other than for purposes of
82 resale, a catalytic converter or a motor vehicle on which a catalytic converter is installed, for
83 personal, family, household, or business use.

84 (2) In transactions not exempted by subdivision (1) of this subsection, any person
85 delivering ~~five~~ one or more automobile catalytic converters to a scrap metal dealer shall, in
86 addition to the requirements set forth in subsection (c) of this section, execute a document ~~stating~~
87 containing the name of the person or entity from whom or which the catalytic converter or
88 converters being delivered was received and affirming that he or she is the lawful owner of the
89 catalytic converters or is authorized by the lawful owner to sell the catalytic converters. Next to
90 his or her signature the person delivering the catalytic converter or converters ~~he or she~~ shall
91 place a clear impression of his or her index finger or thumb that is in ink and free of smearing.
92 This documentation shall be maintained consistent with subsection (c) of this section. Payment
93 for a catalytic converter may be made no fewer than five days after sale to the scrap metal dealer.
94 Payment shall be made by check payable to the seller and sent by U.S. Mail to the address
95 provided by the seller pursuant to subsection (c) of this section. A scrap metal dealer may not
96 process, sell, or remove a catalytic converter from its premises for at least 14 days after its
97 acquisition: *Provided, That the 14-day retention requirement may be reduced to five days if, within*
98 the five-day period, the scrap dealer provides all documentation required under this section to the
99 local detachment of the State Police and the chief of police of the municipality or the sheriff of the
100 county in which he or she is transacting business. A scrap metal dealer shall record any
101 identifying information on a catalytic converter received or purchased and shall not purchase or
102 take possession of a catalytic converter if the identifying information on it has been altered or
103 obliterated.

104 (l) Any person who knowingly or with fraudulent intent violates any provision of this section
105 for which no penalty is specifically set forth, including the knowing failure to make a report or the
106 knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction
107 of a first offense ~~thereof~~, shall be fined not less than \$1,000 nor more than \$3,000; upon conviction
108 of a second offense ~~thereof~~, shall be fined not less than \$2,000 and not more than \$4,000 and,
109 notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred

110 shall issue an order directing the Tax Commissioner to suspend for a period of six months any
111 business registration certificate held by that person; and upon conviction of a third or subsequent
112 offense, ~~thereof~~ shall be fined not less than \$3,000 and not more than \$5,000 and, notwithstanding
113 the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an
114 order directing the Tax Commissioner to cancel any business registration certificate held by that
115 person and state the date ~~said~~ the cancellation ~~shall take~~ takes effect.

116 (m) ~~No~~ A person may not have or take possession of any scrap metal that he or she
117 knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this
118 subsection is guilty of larceny.

119 (n) ~~No~~ A scrap metal dealer may not purchase, possess, or receive scrap metal that the
120 scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the
121 seller. Any person violating this subsection is guilty of larceny.

122 (o) ~~No~~ A scrap metal dealer may not purchase, possess, or receive any of the following
123 items of scrap metal, or any reasonably recognizable part thereof, without obtaining written
124 documentation which reflects that the seller is authorized to possess and sell the item or items
125 and that the seller is in lawful possession of the item of scrap metal:

126 (1) Utility access covers;

127 (2) Street light poles or fixtures;

128 (3) Road or bridge guard rails;

129 (4) Water meter covers;

130 (5) Highway or street signs;

131 (6) Traffic directional or traffic control signs;

132 (7) Traffic light signals;

133 (8) Any metal marked with any form of the name or initials of a governmental entity;

134 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
135 water, or other utility provider;

- 136 (10) Property owned and marked by a railroad;
- 137 (11) Cemetery markers or vases;
- 138 (12) Historical markers;
- 139 (13) Utility manhole covers and storm water grates; and
- 140 (14) Fire hydrant or fire hydrant caps; or
- 141 (15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or
- 142 26 gauge.
- 143 (p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession
- 144 of scrap metal knowing or ~~have~~ having reason to know, that it is stolen or obtained illegally if it is
- 145 done pursuant to a written agreement with law-enforcement officials.

§61-3-49c. Possession of a catalytic converter without documentation of ownership or authority to possess.

- 1 (a) As used in this section, catalytic converter means a motor vehicle exhaust emission
- 2 control that reduces toxic gases and pollutants from an internal combustion engine.
- 3 (b) Any person in possession of a catalytic converter which had previously been installed
- 4 on a motor vehicle, or parts, thereof shall have in his or her possession written documentation of
- 5 ownership or authorization to possess the catalytic convertor. Any person who violates this
- 6 subsection is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000
- 7 or confined in jail not more than one year or both fined and confined.
- 8 (c) Each catalytic convertor possessed in violation of subsection (b) of this section shall
- 9 constitute a separate offense.
- 10 (d) Any catalytic convertor possessed in violation of subsection (b) of this section is subject
- 11 to seizure at the time of arrest.
- 12 (e) A person possessing a single catalytic convertor in violation of subsection (b) of this
- 13 section shall for the offense be charged by citation and not subject to arrest for that offense.

14 (f) Notwithstanding the provisions of subsection (b) of this section, presentation to the
15 court in which charges alleging a violation of said subsection are pending sufficient evidence to
16 show lawful ownership or authority to possess constitutes an absolute defense to the charge or
17 charges.